

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**RENE CUELLAR,**

**Plaintiff,**

**v.**

**AMERICAN ADVISORS GROUP,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 5:22-cv-00024**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1446(a), American Advisors Group (“AAG” or “Defendant”) files this notice of the removal of this action from the 37th Judicial District Court, Bexar County, Texas. Defendant submits this Notice in support of its removal. Removal is based on diversity jurisdiction. Defendant respectfully shows as follows:

**INTRODUCTION**

1. On or about December 31, 2021, Plaintiff Rene Cuellar filed his *Original Petition and Application for Temporary Restraining Order* (the “Petition”) in Cause No. 2021CI26449 in the 37th Judicial District Court, Bexar County, Texas, styled *Rene Cuellar v. American Advisors Group* (the “State Court Action”). A true and correct copy of the Docket Sheet from the State Court Action is attached hereto as Exhibit A. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served in the State Court Action, including the Petition, are attached hereto within the contents of Exhibit B.

2. The allegations in the Petition relate to foreclosure proceedings on the real property located at 3007 W. Gerald Avenue, San Antonio, Texas 78211 (the “Property”). (*See* Petition at ¶10). In the Petition, Plaintiff alleges that the subject reverse mortgage loan is not

delinquent and that there is no basis for the pending foreclosure sale. (*Id.* at ¶12.) Plaintiff seeks an order enjoining AAG from foreclosing on the Property. (*Id.* at ¶ 13).

3. This Notice of Removal is timely because Defendant has not been served, and thirty (30) days have not expired since Defendant appeared herein, making removal proper in accordance with 28 U.S.C. § 1446(b).

4. This action is removable to federal court pursuant to pursuant to the diversity jurisdiction conferred by 28 U.S.C. § 1332.

### **BASIS FOR REMOVAL – DIVERSITY JURISDICTION**

#### **A. There is complete diversity among all properly joined parties.**

5. Removal of the State Court Action to this Court is proper pursuant to 28 U.S.C. §§ 1332, 1441(a) and (b) because the amount in controversy is well in excess of \$75,000.00 exclusive of interest, costs, and attorneys` fees.

6. Plaintiff resides in and is a citizen of Texas. (*See* Petition at ¶2.)

7. Defendant is a California corporation with its principal place of business in California, making it a citizen of California. 28 U.S.C. § 1332(c)(1).<sup>1</sup>

8. Because Defendant and Plaintiff are citizens of different states, there is complete diversity among the parties. *See* 28 U.S.C. § 1332(a)(1).

#### **B. Plaintiff`s request for injunctive relief and damages exceed \$75,000.00.**

9. The amount in controversy exceeds the sum or value of \$75,000.00. In the Fifth Circuit, when declaratory or injunctive relief is sought, the amount in controversy is measured by the value of the object of the litigation, and the value of that right is measured by the losses that will follow. *Webb v. Investacorp, Inc.* 89 F.3d 252, 256 (5th Cir. 1996). Stated differently, “the

---

<sup>1</sup> *See Smith v. Am. Advisors Grp., Inc.*, No. 3:17-cv-403-DCB-LRA, 2017 U.S. Dist. LEXIS 143918, at \*3 n.1 (S.D. Miss. Sep. 6, 2017).

amount in controversy, in an action for declaratory and injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented.” *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983); *see also Lamarr v. Chase Home Finance, LLC*, 2008 WL 4057301 (N.D. Miss. 2008) (finding amount in controversy requirement was satisfied where plaintiff sought to set aside foreclosure sale and home appraised for \$83,000.00, plus unspecified amount of monetary damages); *Bank of America National Trust and Sav. Assoc. v. Reeves*, 1995 WL 96617, \*1 (E.D. La. 1995) (court held that the amount in controversy was met in action seeking to enjoin foreclosure on property because the suit “puts at issue the entire value of the property on which they attempt to enjoin defendants from foreclosing.”).

10. Plaintiff seeks a temporary restraining order and seeks an injunction prohibiting a foreclosure sale on the Property. (*See Petition* at Prayer).

11. As a result, Plaintiff has put an amount in controversy equal to the value of the Property. The Bexar County Appraisal District shows the Property valued at \$112,637.00 (Exhibits C, C-1.)

12. Defendant categorically denies that Plaintiff is entitled to an award of damages in any amount or any of relief requested in Plaintiff’s petition, but there can be no question that the Petition places an amount in controversy that significantly exceeds \$75,000.00.

### **VENUE**

13. Venue for removal is proper in this district and division, the United States District Court for the Western District of Texas, San Antonio Division, under 28 U.S.C. § 1441(a) because this district and division embrace the 37th Judicial District Court, Bexar County, Texas, the forum in which the removed action was pending.

### NOTICE

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice is being filed with the Clerk of Court for the 37th Judicial District Court, Bexar County, Texas.

15. The contents of Exhibit B constitute the entire file of the State Court Action.

### CONCLUSION

For the reasons described above, Defendant respectfully requests that this Court take jurisdiction over this matter and proceed as if it had been originally filed herein.

Respectfully submitted,

By: /s/ Mark D. Cronenwett  
**MARK D. CRONENWETT**  
Texas Bar No. 00787303  
mcronenwett@mwzmlaw.com

**NICHOLAS M. FRAME**  
Texas Bar No. 24093448  
nframe@mwzmlaw.com

**MACKIE WOLF ZIENTZ & MANN, P.C.**  
14160 North Dallas Parkway, Suite 900  
Dallas, TX 75254  
Telephone: (214) 635-2650  
Facsimile: (214) 635-2686

**ATTORNEYS FOR DEFENDANT**

**List of all Counsel of Record**

**For Plaintiff:**

Gregory T. Van Cleave  
The Law Office of Albert W. Van Cleave, III PLLC  
1520 W. Hildebrand  
San Antonio, TX 78201  
(210) 341-6588  
(210) 701-8481 (Fax)  
Greg\_v@hotmail.com

**For Defendant American Advisors Group**

Mark D. Cronenwett  
Texas Bar No. 00787303  
mcronenwett@mwzmlaw.com  
Nicholas M. Frame  
Texas Bar No. 24093448  
nframe@mwzmlaw.com  
Mackie Wolf Zientz & Mann, P.C.  
14160 North Dallas Parkway, Suite 900  
Dallas, TX 75254  
(214) 635-2650  
(214) 635-2686 (Fax)

**INDEX OF DOCUMENTS ATTACHED**

- Exhibit A      Copy of the Docket Sheet for Cause No. 2021CI26449 in the 37th Judicial District Court, Bexar County, Texas;
- Exhibit B      Pleadings in Cause No. Cause No. 2021CI26449 in the 37th Judicial District Court, Bexar County, Texas;
- B-1      Plaintiff's Original Petition, filed December 31, 2021
- B-2      Temporary Restraining Order, filed December 31, 2021
- B-3      Surety Bond, filed January 4, 2021
- B-4      Defendant's Original Answer, January 12, 2021
- Exhibit C      Declaration of Nicholas M. Frame;
- C-1      Data Sheet from the Bexar County, Texas Central Appraisal District web-site on January 10, 2022.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served via regular U.S. Mail on January 12, 2022, upon the following:

Gregory T. Van Cleave  
The Law Office of Albert W. Van Cleave, III PLLC  
1520 W. Hildebrand  
San Antonio, Texas 78201  
(210) 341-6588  
(210) 701-8481 (Fax)  
Greg\_v@hotmail.com  
*Attorney for Plaintiff*

/s/ Mark D. Cronenwett  
**MARK D. CRONENWETT**